89-833

NO. _____

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

JOHN GAGLIARDI,

Petitioner

vs.

MICHAEL SORICK,
PAUL ORENDORFF
PAUL KOMAROMY, JR. and
CHRISTINE SHEGAN

Respondends

==========

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

==========

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QUESTIONS PRESENTED FOR REVIEW

1. DID THE COURT OF APPEALS FOR THE THIRD CIRCUIT ERR in affirming the District Court's decision to grant a Rule 12 Motion to Dismiss Petitioner's Complaint based on the grounds of failure to state a claim when facts existed to support a claim for false arrest and false imprisonment?

2. Under a Rule 12 Motion to dismiss for failure to state a claim upon which relief can be granted, can the court dismiss the action if there are a set of facts in support of Petitioner's claim which would entitle him to relief?

3. Does a Township Magistrate of Elizabeth Township, Allegheny County Pennsylvania have judicial immunity when he knowingly causes the false

arrest and false imprisonment, without any public offense having been committed, in clear absence of all jurisdiction?

The Courts below held yes. The doctrine of judicial immunity applies no matter what the facts were according to the courts below.

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Third Circuit. See Rules of the Supreme Court No. 21.1(b).

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I. This Petition for Certiorari should be granted because the decision of the Court of Appeals for the Third Circuit and the District Court erred in granting a Rule 12 Motion to Dismiss on the grounds of failure to state a claim upon which relief can be granted when there were facts to support petitioner's claim, which was against a magistrate who acted wholly without jurisdiction in

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Respondents.

PETITION FOR WRIT OF CERTIORARI
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To the Honorable, The Chief Justice and Associate Justices of the United States Supreme Court:

John Gagliardi, Petitioner herein, respectfully requests that a Writ of Certiorari issue to review the judgments of the United States Court of Appeals for the Third Circuit entered on July

10, 1989. Petition for Rehearing was denied on August 10, 1989.

OPINIONS BELOW

The denial of my petition for Rehearing En Banc by the Third Circuit and the Memorandum Opinion of the Court, although marked NOT FOR PUBLICATION, appear in the Appendix to this Petition.

The United States District Court for the Western District of Pennsylvania, Judge Standish, dismissed Petitioner's Complaint No. 87-1979 for failure to state a claim upon which relief can be granted as to Defendant Shegan on December 2, 1988, dismissed Petitioner's complaint against Defendants Orendorff and Komaromy on December 2, 1988, and entered judgment on the pleadings in favor of Defendant

Sorick and against plaintiff, John Gagliardi on December 2, 1988.

JURISDICTION

The final judgment for the United States Court of Appeal for the Third Circuit was entered July 10, 1989. This petition for certiorari was filed within 90 days of Denial of Petition for Rehearing which was dated August 10, 1989. This Court's jurisdiction is invoked pursuant to Article III of the U.S. Constitution and under 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States of America,

Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place or things to be seized.

Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury... nor be deprived of life, liberty or property, without due process of law...

Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause

of the accusations;
to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

Seventh Amendment:

In suits at common law, where the value in controversy shall exceed $20.00 the right of trial by jury shall be preserved,...

Ninth Amendment:

The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

Fourteenth Amendment: (Section .1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

United States Law,

42 U.S.C. Section 1983 (1982):

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceedings for redress. For the purposes of this section, and Act of Congress application exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Magna Charta:

Section 39.

> No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed--nor will we to upon or send upon him--save by the lawful judgment of his peers or by the law of the land.

Section 40.

To none will we sell, to none deny or delay, right or justice.

The Declaration of Rights:

In Congress, at New York on October 19, 1765

7th - That trial by jury is the inherent and invaluable right of every British subject in these colonies.

13th - That it is the right of the British subjects in these colonies to petition the King or either house of Parliament.

In Congress, at New York on October 14, 1774

RESOLVED: 1. That they are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent.

RESOLVED: 2. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privileges of being tried by their peers of the vicinage, according

to the course of that law.
RESOLVED: 3. That they have a right peaceable to assemble, consider of their grievances, and petition the King; and that all prosecutions prohibitory proclamations, and commitments for the same, are illegal.

STATEMENT OF THE CASE

By this Petition, the Supreme Court is asked to certify up the record of the Third Circuit Court of Appeals to review a judgment dismissing the complaint in a civil rights case, pursuant to 42 U.S.C. Section 1983, against a township magistrate in Allegheny County, Pennsylvania.

Since on a motion to dismiss on the pleadings or on summary judgment the facts must be taken in the light most favorable against the moving parties making the motion both in the trial court and in the appellate court, Petitioner will set forth the facts most favorable to his position.

The case arose out of an event whereby the Magistrate Komaromy, Jr.,over the telephone, outside of his

magisterial district, without any offense having been committed in or out of his presence, without subject matter or personal jurisdiction over Petitioner, in clear absence of any jurisdiction, caused a constable to arrest Petitioner falsely and brought out of a district where no jurisdiction existed into his magisterial district, and then and there falsely imprisoned petitioner in violation of the 4th, 5th, 6th, 9th, and 14th Amendments of the U.S. Constitution and 42 U.S.C. Section 1983.

The sequence of events precipitating this cause of action are as follows:

Petitioner's son, John S. Gagliardi, made his home at his mother's address in Elizabeth Township, Allegheny County, Pennsylvania. Petitioner was separated from her and lived at 191 Wall Road

Clairton, Pennsylvania, where he had his place of business.

The son, while going to school in a different county, Indiana County, received a traffic citation.

John Gagliardi's son had not been in that area for approximately six months because he had suffered an attack of ulcerated colitis and blood clots. This illness caused him to be admitted to intensive care three times and required the doctor to make five, eight inch cuts to drain and save his leg.

During his absence, the roads on campus had been changed and the road signs were not properly placed. Upon returning to the campus he became confused because of the road changes and because he was driving at night.

Officer Shegan detained Petitioner's

son for approximately 45 minutes because Scott stated that he did not see the stop or yield signs. The next day Scott discovered that the yield and stop signs were still in their old locations, approximately forty feet to the right of the new intersection. These signs are almost impossible to see at night.

U.S. Industrial Fabricators, Inc. issued a check for the bond in the amount of $57.50 as requested by Orendorff; which Orendorff deposited in his magisterial district account. The funds for the bond were removed from U.S. Industrial Fabricators Inc.'s account when District Justice Orendorff deposited the check into his bank account. This clearly shows that there was a response to the citation.

Orendorff proceeded to try the son in his absence, and knowing that a check had been issued for the bond, found him guilty, and then issued the following Warrant of Arrest even though the fine had been paid:

COMMONWEALTH OF PENNSYLVANIA) SS:
COUNTY OF INDIANA)

WARRANT OF ARREST

To any authorized person:

In the name of the Commonwealth of Pennsylvania, you are commanded to take into custody (DOB 06-01-67)
(name) John S. Gagliardi
(address) 699 First Street
West Elizabeth, PA 15088

If the defendant be found in said Commonwealth, and bring the defendant before us at (address)

8th and Water Sts, Indiana, PA 15701

to answer the Commonwealth or

Indiana Borough (political subdivision)

upon the complaint or citation of

Officer C.A. Shegan

charging the defendant with

Stop Signs and Yield Signs

and further to be dealt with according to law, and for such purposes this shall be your sufficient warrant.

WITNESS the hand and official seal of the issuing authority on this 10th day of September, 1987,

(seal) /s/ Richard Orendorff

Magisterial District No. 40-2 01
Citation No. A 10280
Summons No.
Docket No. M-1037-87

Amount required to satisfy sentences:

Fine	$35.00
Costs	$22.50
Total	$57.50

Amount needed to satisfy collateral:
$67.50

DEFENDANT'S COPY

The Warrant was then sent to

Constable Sorick of Elizabeth Township,

Allegheny County, Pennsylvania, the residence township of the son; and Sorick was commanded to take the son into custody and bring him before Magistrate Orendorff at 8th and Water Streets in Indiana, Pennsylvania.

Elizabeth Township Constable Sorick took the Warrant and went to the mother's home in Elizabeth Township looking for the son in order to arrest him pursuant to the Warrant. Constable Sorick could not locate the son in Elizabeth Township in Allegheny County, Pennsylvania. Constable Sorick then went outside his Magisterial District into Jefferson Borough, Pennsylvania to the Petitioner's place of business looking for the son with the Warrant of Arrest.

Petitioner was in his business office at the time Sorick came in.

Sorick was a new constable with only 30 days experience. Sorick approached Petitioner, John Gagliardi, in his office and inquired the whereabouts of the son, stating he had a Warrant for the son's arrest. Petitioner showed Sorick, the constable, a copy of the check for $57.50 and showed him the bank statement, where the $57.50 had been removed from his account. Gagliardi offered to make another payment to Sorick and the magistrate with a memorandum of understanding on the check. Sorick refused.

Sorick then called Magistrate Komaromy of Elizabeth Township for advice, using U.S. Industrial Fabricators Inc.'s phone.

At this time Magistrate Komaromy had NO SUBJECT MATTER JURISDICTION over

the case, as it was from a foreign magisterial jurisdiction in a different county. In addition, Magistrate Komaromy had NO PERSONAL JURISDICTION over Gagliardi, as Gagliardi had not committed and was not accused of committing any offense, either before or outside of Magistrate Komaromy's presence.

Magistrate Komaromy told Constable Sorick to put Petitioner Gagliardi on the telephone line after Sorick made Komaromy aware the fine had been paid. Magistrate Komaromy then ordered Petitioner Gagliardi to make out another check for payment of the fine that had already been paid! Magistrate Komaromy then ordered Constable Sorick to ARREST Petitioner Gagliardi IMMEDIATELY, and bring Gagliardi before him at his office

in Elizabeth Township. Knowing the fine had been paid, that he had no jurisdiction over the action and that Petitioner was not the person named in the Arrest Warrant, Magistrate Komaromy proceeded to order Constable Sorick to arrest Petitioner. When Petitioner arrived at Komaromy's office and asked why he was arrested, Magistrate Komaromy refused to state any grounds.

At the time of the arrest Warrant, Magistrate Komaromy had NO JURISDICTION over the action which caused the Arrest Warrant to be issued. The Arrest Warrant was not assigned to Magistrate Komaromy. The Arrest Warrant from Magistrate Orendorff had been given to constable Sorick by a clerk. There was no action pending before Magistrate Komaromy as his jurisdiction is limited

to Elizabeth Township. Without a chargeable offense, and without jurisdiction, Magistrate Komaromy ordered an arrest for a nonact committed in a territory outside his Elizabeth Township jurisdiction.

Petitioner was not a party to any proceeding before Magistrate Komaromy. Petitioner committed no offense. Very simply, Petitioner Gagliardi would not follow the dictatorial order given over the phone by Magistrate Komaromy to pay a fine that had already been paid!

There is no allegation that Petitioner was in Contempt of Court. No file was set up. Elizabeth Township magisterial district court is not a court of record. No complaint was pending before Magistrate Komaromy. There was a total and complete lack

of jurisdiction as far as Magistrate Komaromy was concerned. He had nothing to do with the case.

Had the case been before Magistrate Orendorff, the Third Circuit Opinion might have had some semblance of a basis, although the Third Circuit would have no basis whatsoever to justify the arrest of the Petitioner on an Arrest Warrant issued for his son.

Magistrate Komaromy, however, was not the magistrate that had jurisdiction of the Warrant. Komaromy was as foreign to this warrant as a magistrate in the State of Ohio would have been.

Constable Sorick, for a (ten dollar) $10.00 fee, was executing a Warrant or collecting a fine on behalf of Justice Orendorff of a court

in another county and in another township. Constable Sorick only called Magistrate Komaromy for advice. Constable Sorick did not call him to invoke any judicial jurisdiction. Magistrate Komaromy was not acting in a judicial capacity in any matter pending before him. The matter was pending before Magistrate Orendorff. The action taken by Magistrate Komaromy did not constitute a judicial act, and was an act taken without jurisdiction, cause or reason!

In addition to being falsely arrested and falsely imprisoned by Magistrate Komaromy, Petitioner was subjected to extreme harassment and indignities when he was brought before Magistrate Komaromy. For example, when Petitioner asked Magistrate Komaromy why he was arrested, he was

told to "shut up and sit down or he would have to post a $5,000.00 (Five Thousand Dollar) bond." These indignities took place in front of citizens and witnesses gathered in the court building at the time.

In summary, Petitioner was arrested and taken forcibly from his office and was falsely imprisoned for approximately four (4) hours.

THE DECISION BELOW

The decision and Memorandum Opinion of the Third Circuit Court of Appeals below are attached hereto as an Appendix.

The facts in the decision below are wrongly set forth. The Third Circuit made up the facts against Petitioner to justify their opinion, and did not view all the facts in the light most favorable to the

Petitioner, as the Third Circuit is compelled to do on a proceeding for a dismissal on the grounds the complaint alleged no cause of action.

The Third Circuit Court ordered its decision not to be published to cover-up an erroneous opinion and to aid and abet Judge Standish's erroneous court orders.

The Third Circuit's decision relies heavily upon a 1978 decision in Stump v. Sparkman. 435 US 349, 98 S.Ct. 1099 which is not on point at all. In Stump v. Sparkman, the Court was one of general jurisdiction and the Court had both subject matter jurisdiction and personal jurisdiction over the person who was wronged, unlike the instant case wherein there was no subject matter or personal jurisdiction over Petitioner Gagliardi.

REASONS FOR GRANTING THE WRIT

I. This Petition for Certiorari should be granted because the decision of the Court of Appeals for the Third Circuit and the District Court erred in granting a Rule 12 Motion to Dismiss on the grounds of failure to state a claim upon which relief can be granted when there were facts to support Petitioner's claim, which was against a magistrate who acted wholly without jurisdiction in falsely arresting and imprisoning Petitioner.

A. The trial Court erred when it appears that there was a set of facts that Plaintiff Gagliardi could provide in support of his claim.

The defendant Magistrate Komaromy, after he was served with the Complaint, moved to dismiss the complaint pursuant to Rule 12b, Federal Rules of Civil Procedure on the the grounds of failure to state a claim upon which relief could be granted. This Motion was granted by the trial court and affirmed by the Court of Appeals.

Trial Court Judge Standish erred

in refusing to acknowledge the true facts as set forth in Constable Sorick's affidavit in the instant action, and instead chose to accept the perjured and false testimony of Magistrate Komaromy. The Court below clearly misapplied the applicable law.

The controlling case is Jenkins v. McKeithen, 395 US 411 (1969), wherein this Court held that a Complaint should not be dismissed unless it appears that Plaintiff could not set forth facts which would entitle him to relief.

> "Motion to dismiss is ordinarily directed in allegations of complaint, and if claim for relief could not conceivable be proved thereunder, motion should not be granted." Kochiacs v. Local Bd. No. 92, C.A. III, (1973), 476 F.2d 557.

> "A motion to dismiss may only be granted in the clearest of cases, and where additional facts obviously are required before an ultimate judgment may be formed, the motion

must fail." Swartz v. Eberly, D.C.Pa. (1962), 212 F.Supp 32.

The Court of Appeals not only misapplied the law in this case, but by its decision made up facts and arguments that were most favorable to the Defendant Magistrate, who was the moving party.

This was plain error.

As is set out in the next assignment of error, there were facts easy to prove that entitled Petitioner to relief.

B. The Court of Appeals erred by failing to apply the plain language of the U.S. Constitution to the facts by holding that the offending magistrate, who was acting without any jurisdiction, as an INTERLOPER in a case that was pending in a different county before a different magistrate, and who ordered the false arrest and false imprisonment of Petitioner Gagliardi. Petitioner was not a party to any criminal proceedings and had committed no offense.

In this case, Komaromy ordered the arrest of a private citizen, John Gagliardi, because he disapproved of the manner in which Gagliardi proposed to write him a check. Even if Gagliardi had incorrectly drawn his draft, such drafting is not, was not, and never has been, a crime. The District Justice knew that John Gagliardi was not the defendant named in the warrant of arrest which had been referred to his office by the office of District Justice Orendorff.

Under the current law of the Commonwealth of Pennsylvania, the courts of general trial jurisdiction are called the Courts of Common Pleas. The defendant Komaromy is not a judge. His official title is "District Justice". He is referred to as a member of the "minor judiciary". Members of the minor

judiciary do not have to be learned in the law. The defendant in this case is not. He is not an attorney and does not have a formal legal education. The Magistrate acted wholly without any jurisdiction, either subject matter, or personal as is shown from the above recited facts. The jurisdiction extended to District Justices is limited to certain cases strictly spelled out in the Pennsylvania Judicial Code, 42 PA C.S. It is perhaps most important to note that in the case of a District Justice there is no jurisdiction unless it has been specifically granted; while with a judge of the Court of Common Pleas, there is jurisdiction unless it has been excluded. District Justices, among other things, do not and never have had the contempt power. If anything,

the actions of Komaromy appear to be analogous to the exercise of a contempt power. The problem for Komaromy is that he does not have the power he sought to exercise, and his position never has had that power.

In reviewing this matter the facts must be viewed in a light most favorable to Petitioner.

In reviewing this matter the plain language of the controlling authority of the U.S. Constitution, 4th, 5th, 6th, 7th, 9th, and 14th Amendments must be applied.

In reviewing this matter the controlling Pennsylvania law and other authorities must be applied.

According to Rule 130 of PA. Rules of Criminal Procedure, if the arrest is made without a warrant, a complaint

must be filed against the defendant. There must be a preliminary arraignment and hearing without delay. Pa.R.Crim.P. Rule 75 defines the procedure for the arrest of a defendant. PA.R.Crim.P. Rule 101 sets forth the procedure and means of instituting proceedings.

None of the rules and procedures of Pennsylvania Statutes were followed by Magistrate Komaromy. He acted completely without any semblance of jurisdiction under the law, nor does he in his false affidavit set forth any jurisdictional facts.

The District Court and the Court of Appeals seem to have overlooked the fact of Komaromy's false swearing in this case. Komaromy suggested that Gagliardi was never placed under arrest, but merely asked to come down to the

magistrate's office for a nice little chat. When he made this affidavit, the defendant Komaromy apparently did not know that the defendant Sorick had already given to the Plaintiff an affidavit which shows clearly that the constable acted under clear orders from Komaromy in making this illegal arrest.

According to Pennsylvania Statute Section 5301, Magistrate Komaromy is guilty of official oppression when he, knowing full well his conduct was illegal, subjected Petitioner to arrest.

Magistrate Komaromy violated Section 5302 when he caused an arrest without warrant; then made no formal complaint.

There was a clear absence of all jurisdiction over Petitioner. See Bradley v. Fisher, 13 Wall 335, 20 L.Ed 646. The judicial capacity has no

application where the officer acts wholly without jurisdiction.

The Supreme Court needs to exercise caution in terms of extension of the doctrine of judicial immunities any farther than they already exist, see Forrester v White, 484 US, 108 S. Ct, 98 L.Ed 2d 555(1988). For a case directly in point on the law see Hoppe v. Klappernick, 28 N.W. 2 D 780, 224 Minnesota Report.

In Hoppe, supra, the defendant Justice of the Peace issued a Warrant that was legal on its face; however, it was based on no complaint required by law and no probable cause supported by oath or affirmation.

The instant case is much more flagrant. The Minnesota case of Hoppe v. Klappernick, is very much on point and is in line with U.S. Supreme Court cases. As it applies to a Magistrate the following quote from

Hoppe is most appropriate:

> "This salutary rule conferring upon a judicial officer well-nigh absolute immunity from liability for acts done while acting in his judicial capacity has no application if he acts wholly without jurisdiction. Absent all jurisdiction, there is no immunity for a judicial officer, regardless of his station. See Roerig v. Houghton, 144 Minn. 231 175 N.W. 542, 30 Am. Jur. Judges Sections 44, 45: 3 Dunnell, Dig. & Supp. Section 4959; Annotations, 13 A.L.R. 283, and 137 Am. St. Rep. 53
>
> *** A judge is not such at all times and for all purposes; when he acts he must be clothed with jurisdiction; and acting without this, he is but an individual falsely assuming an authority he does not possess. 2 Cooley, torts, 4th Ed. Section 315.
>
> As already noted, defendant Henning was possessed of the same jurisdiction in criminal matters as a justice of the Peace. A justice court is of special and limited jurisdiction and is confined strictly to the power conferred on it by statute. Holgate v. Broome, 8 Minn. 243, Gil. 209; May v. Grawert, 86 Minn. 210, 90 N.W. 383; State ex rel. Faughman v. Miesan, 96 Minn. 466, 105 N.W. 555; State ex. rel. Melster v.

Stanway, 174 Minn. 608, 219 N.W. 452; In re Harrand, 254 Mich. 584, 236 N.W. 869; 4 Dunnell, Dig. & Supp. Section 5270; Id Dig. Sec. 5290. The jurisdictional power to issue warrants for the arrest of alleged criminal offenders is governed by M.S.A. Section 629.42 which provides:

Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine on oath, the complaint and any witnesses who shall appear before him, reduce the complaint to writing, and cause it to be subscribed by the complainant; and if it shall appear that such offense has been committed, he shall issue a warrant. ***

It stands admitted by the demurrer that defendant Henning issued the warrant before any complaint had been made in writing. The only reasonable factual inference to be drawn from this allegation is that no complaint had been reduced to writing and subscribed by the complainant when the warrant was issued. The Statute invests the magistrate with power, the jurisdiction to issue a warrant, only on the happening of a certain event, namely, the making of a complaint which has been reduced to writing and subscribed, and not otherwise. State v. Graffmuller, 26 Minn. 646 N.W. 445: State ex rel. Sheehy v. Bates, 96 Minn.

150, 104 N.W. 890; 4 Dunnell Dig. & Supp. Section 5343. Obviously, jurisdictional facts must actually exist before jurisdiction is acquired. In issuing a warrant without first having a complaint reduced to writing and subscribed by a complainant as required by a statute, defendant Henning, as a municipal judge vested with powers of a justice of the peace in criminal matters, acted wholly outside his jurisdiction and in a nonjudicial capacity and for such act he can claim no immunity from liability in a civil suit for damages. He was not functioning as a judge, but as a private individual liable in damages for his tortuous acts.. He could not acquire the jurisdiction essential to judicial immunity without first having a written complaint duly subscribed. In the absence of a written complaint, there was not even a colorable invocation of jurisdiction. Henning acted not in a mistaken reliance upon a written complaint that was defective in failing to state facts necessary to constitute a criminal offense (Broome v. Douglas, 175 Ala. 268, 57 So. 860, 434 L.R.A.N.S., 164 Ann. Cas 1914 C, 1155) infra or upon a complaint that was merely irregular in not being properly verified (State v. Rudin, 152 Minn 159, 189 N.W. 710), but without any written complaint at all. There was a total absence of

> jurisdiction.
>
> In order to give immunity to a justice of the peace or a magistrate issuing a warrant, it must appear that the warrant was issued on sufficient affidavit or complaint, where it is not issued on view (31 Am Jur. Justices of the Peace, Section 25).
>
> Therefore Henning acted in a private capacity, and he can claim no judicial immunity with respect to either cause of action."

This is certainly a case of malicious false imprisonment, under color of state law, carried out for an unlawful and ulterior purpose. It is clearly a violation of the 4th and 5th Amendment rights to be free from unlawful search and seizures, unless on probable cause supported by oath or affirmation. It is definitely a 14th Amendment deprivation of liberty.

Nothing quoted from Stump v. Sparkman, 435 US 349 is applicable here. The facts are completely different.

In Stump, there was a case or Petition pending before a Judge of general jurisdiction and the judge had subject matter and personal jurisdiction.

In contrast, the magistrate's court is one of very limited jurisdiction in the township where it sits. It is the same as a Justice of the Peace Court. It is not a court of record.

One of the primary reasons for giving absolute immunity to a judge of a court of general jurisdiction is that in the event that the question of jurisdiction is murky, it is likely that the jurisdiction exists. Jurisdiction is generally present unless it has been excluded by an act of the legislature or by proper Rule of Court. For this reason, it may be persuasively argued that a judge's error on a question

of jurisdiction should be no more actionable than a judge's error on a question of law within the scope of his jurisdiction. There is no way that this argument can be logically extended to include the situation in the case at bar. In the case of a District Justice, jurisdiction is not present unless specifically granted. In no manner has the Pennsylvania General Assembly granted to District Justices the power of arbitrary arrest without cause.

In the instant case Constable Sorick telephoned Magistrate Komaromy from outside Komaromy's territorial jurisdiction for advice. In giving Constable Sorick "advice", Magistrate Komaromy ordered Sorick to arrest Petitioner and ordered Sorick to bring Petitioner before him.

As stated previously, when the Petitioner asked the magistrate why he was being arrested, the magistrate told Petitioner to sit down in his waiting room and wait or he would place him under a $5,000.00 bond, humiliating him in front of other citizens who were present.

If Magistrate Komaromy can do this, and be protected by judicial immunity, then what is there to stop him from ordering Constable Sorick to take a gun and shoot the Petitioner? Under the Third Circuit's decision of July 10, 1989 there is nothing to stop Magistrate Komaromy from doing this. See Marbury v. Madison, 1 Cranch 137, 163, 2 L.Ed. 60,69 (1803):

> "The very essence of civil liberty certainly consists in the right

of every individual to claim the protection of the law, whenever he receives an injury."

As stated in Bivens v. Six Unknown Agents, 403 U.S. 388, 394-395, 29 L.Ed 2d 619, 91 S.Ct. 1999:

"But it is...well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." Bell v. Hood, 327 US at 684, 90 L.Ed at 911, 13 SLR 2d. 383 (footnote omitted).

"The mere invocation of federal power by a federal law enforcement official will normally render futile any attempt to resist an unlawful entry or arrest by resort to the local police; and a claim of authority to enter is likely to unlock the door as well. See Weeks v. United States, 232 U.S. 383, 386, 58 L.Ed 652, 34 S.Ct. 341 (1914); Amos v. United States, supra, (403 US 395) except in the protection of judicial tribunal for rights which have been invaded by the officers of the government, professing to act in its name. There remains to him by the alternative of resistance, which may amount to crime." United States

v. Lee, 106 US 196, 219, 27 L.Ed. 171, 181, 1 S.Ct 240 (1882).

One of the reasons frequently advanced in support of the doctrine of immunity is to encourage judges and persons involved in the administration of justice to perform their duties in a more confident manner, in order that they perform their duties without fear of civil suits and liability for every hypothetical error. The instant case, however, does not deal with a reasonable mistake in the handling of a matter before the court. This case amounts to what is little more than kidnaping, and an attempted extortion disguised as an arrest. There is no conceivable public policy argument which would support encouraging actions of the sort which have been performed by Magistrate Komaromy who acted completely without

any semblance of jurisdiction.

Before the Court concludes automatically that the defendant Magistrate Komaromy was immune from a civil action for damages, the Court must determine that the defendant was acting with jurisdiction, which it can not do. As the Court states in Stump v. Sparkman, supra:

> "The Indiana law vested in Judge Stump the power to entertain and act upon the petition for sterilization. He is therefore, under the controlling cases, immune from damages, liability, even if his approval of the petition was in error."

Stump is distinguished on its facts.

As is shown from the facts above set out, there is no semblance of jurisdiction: subject matter, personal, or otherwise. The arrest was not ordered to bring Petitioner before the court for any offenses civil or criminal, but

for the sole purpose of attempting to force the will of the magistrate upon petitioner and to get Petitioner to perform an act he had no duty to perform. Petitioner made it very clear that the fine had already been paid. Magistrate Komaromy had no jurisdiction in the matter at all.

CONCLUSION

For the foregoing reasons, based upon the facts viewed most favorably to Petitioner, this Petition for Certiorari should be granted.

Respectfully submitted,

NOVEMBER 6, 1969

John Gagliardi, Petitioner
191 Wall Road
Clairton, Pennsylvania 15025

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-3838

JOHN GAGLIARDI,
Appellant

vs

MICHAEL SORICK, RICHARD ORENDORFF,
PAUL KOMAROMY, JR. AND CHRISTINE SHEGAN

SUR PETITION FOR REHEARING

BEFORE: GIBBONS: Chief Judge,
HIGGINBOTHAM, SLOVITER,
BECKER, STAPLETON, MANSMANN,
GREENBERG, HUTCHINSON, SCIRICA,
COWEN, and NYGAARD, Circuit
Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/Walter K. Stapleton
Circuit Judge

Dated: August 10, 1989

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-3838

JOHN GAGLIARDI,
Appellant

vs

MICHAEL SORICK, RICHARD ORENDORFF, PAUL KOMAROMY, JR. AND CHRISTINE SHEGAN

On Appeal From the United States District Court For the Western District of Pennsylvania (Pittsburgh) (D.C. Civ. No. 87-1979
District Judge: Honorable William L. Standish

Submitted Pursuant to Third Circuit Rule12(b)
May 5, 1989

BEFORE: STAPLETON, GREENBERG, and SCIRICA,
Circuit Judges

(Opinion filed July 10, 1989)

MEMORANDUM OPINION OF THE COURT

STAPLETON, Circuit Judge:

I.

Appellant John Gagliardi initiated this civil rights action in the district pursuant to 42 U.S.C. 1983 alleging that he was falsely arrested. Accordingly (sic) to the complaint, appellee Shegan, a campus police office(sic) for Indiana University of Pennsylvania, issued a traffic citation to appellant's son for a moving violation. Appellant decided that he would post bond on his son's behalf and request a hearing before appellee District Justice Orendorff. The bond provided to Orendorff took the form of a check drawn against appellant's business account, executed by appellant and made payable to Shegan. Because the check had a payee who did not

endorse, Shegan, the check did not clear and was collected back against Orendorff.

Appellants's son was tried *in absentia* by Orendorff and convicted for running a stop sign. Thereafter, Orendorff issued an arrest warrant against appellant's son for nonpayment of the fine. The arrest warrant was transferred to appellee District Justice Komaromy's office for service on appellant's son.

Appellee Constable Sorick, seeking to serve the arrest warrant on appellant's son, went to appellant's business office where he encountered appellant. Appellant explained to Sorick that he believed the citation to have already been paid but nevertheless offered to issue another check.

Sorick thereafter placed a telephone call to Komaromy from appellant's office, describing how appellant wished to draft the check. Komaromy advised appellant over the telephone that the manner in which he wanted to draw the check was improper and instructed him how to draft it properly. Appellant refused to draw the check as instructed. Komaromy then directed appellant to appear at his magisterial office immediately, to which appellant also refused. Komaromy thereafter directed Sorick to bring appellant to his office, apparently by force if necessary. Appellant accompanied Sorick to Komaromy's office. No action was taken against appellant by Komaromy, and appellant was subsequently returned to his office later that same day.

Motions to dismiss were filed by the appellees in the district. Following a hearing on the motions, orders were entered granting appellee's motions to dismiss. As to Sorick, judgment on the pleadings was granted on the basis of a release executed between Sorick and appellant.

Shegan's motion to dismiss was granted for failure to state a claim upon which relief could be granted, since Shegan was not involved in the alleged false arrest. As to Orendorff, the motion to dismiss was granted on two grounds: one, judicial immunity; and, two, for failure to state a claim, since Orendorff only issued the arrest warrant for appellant's son. Finally, as to Komaromy, the motion to dismiss was granted on the basis of judicial

immunity, Standish finding that Komaromy was performing within the scope of his subject-matter jurisdiction.

II

We are asked to review on appeal the district court's granting of Orendorff and Komaromy's motion to dismiss.[1] Because we believe the district court reached the correct result in granting this motion to dismiss, the judgment of the district court will be affirmed.

As to Orendorff, appellant lacks

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1. Appellant has not raised as issues on appeal the district court's granting of Sorick's motion for judgment on the pleadings, based on the executed release, or of Shegan's motion to dismiss, based on her non-involvement in the alleged false arrest.

standing to challenge the action in issuing the arrest warrant against appellant's son for nonpayment of a fine. The arrest warrant neither named appellant nor did Orendorff play any role in the actual serving of the warrant. As a prudential requirement to federal court standing, it has been firmly established that "the plaintiff generally must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." Valley Forge Christian College v. Americans United For the Separation of Church and State, 454 U.S. 464, 472(1982). Accordingly, appellant lacks standing to attack the issuance of the warrant.

Judge Standish granted the motion to dismiss as to Komaromy on the basis

of judicial immunity, finding that because Komaromy was acting within the area of his subject-matter jurisdiction, traffic offenses, he was entitled to immunity even if he otherwise exceeded the authority conferred to him. There is no dispute that appellant was neither named in the arrest warrant or required by law to pay the traffic fine on his son's behalf.

It has been declared "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, (should) be free to act upon his own convictions, without apprehension of personal consequences to himself." Stump v. Sparkman, 435 U.S. 349, 355 (1978) (quoting Bradley v. Fisher, 80 U.S.

(13 Wall.) 335, 347 (187). Accordingly, the Supreme Court has repeatedly held that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." Id. at 355-56 (quoting Bradley v. Fisher, 80 U.S. (13 Wall.) at 351).[2] A party wishing to defeat the doctrine of judicial immunity may thus pursue two avenues of attack: one, that the judicial officer acted outside his or her jurisdiction; and,

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2. The doctrine of judicial immunity has been held applicable to suits under 42 U.S.C. § 1983, since the legislative record thereto gave no indication that Congress intend to abolish this long-established principle. Pierson v. Ray, 386 U.S. 547 (1967).

two, that the action taken by the judicial officer did not constitute a "judicial" act.

The Supreme Court has suggested that "the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." Id. at 362. Appellant intervened in the controversy to settle a debt incurred by his son, for whom an arrest warrant had issued and service had been authorized. Accordingly, appellant cannot successfully claim that he was not dealing with Komaromy in his judicial capacity. See, e.g., Stump v. Sparkman,

435 U.S. 349 (judicial approval of a petition for sterilization a "judicial act" despite the fact that the petition was not given a docket number, was not placed on file with the clerk's office, and was approved in an ex parte proceeding without notice of the minor, without a hearing, and without the appointment of a guardian ad litem); McAlester v. Brown, 469 F.2d 1280 (5th Cir. 1972) (a state district judge was entitled to judicial immunity even though at the time of an altercation giving rise to the suit he was not in his judge's robes, he was not in the courtroom itself, and he may well have violated state and/or federal procedural requirements regarding contempt citations) (cited with approval in Stump v. Sparkman, 435 U.S.. at 361). Compare

Harper v.Merckle, 638 F.2d 848 (5th Unit B 1981) (although county judge's asking plaintiff to raise his right to be sworn in and subsequently finding plaintiff in contempt occurred in judge's chambers, judge's ordering plaintiff apprehended, holding contempt proceeding and ordering plaintiff incarcerated were not "judicial acts" since controversy that led to incarceration did not center around any matter pending before the judge but around domestic problems of plaintiff's former wife, who worked in the judge's chambers and who plaintiff was attempting to locate, and problems, including judge's apparently mistaken belief that divorce contained outstanding contempt violation, were brought to judge's attention in a social forum and plaintiff did not

visit the judge in his official capacity); Zarcone v. Perry, 572 F.2d 52 (2d Cir. 1978) (traffic judge not entitled to judicial immunity for ordering plaintiff, a coffee vender(sic), brought before him in handcuffs and thereafter threatening and intimidating plaintiff in judge's chambers for selling to judge allegedly "putrid" coffee).

In deciding whether a judicial officer acted within his jurisdiction, so as to be immune from suit, the necessary inquiry is "whether at the time he took the challenged action he had jurisdiction over the subject matter before him." Stump v. Sparkman, 435 U.S. at 356. "[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." Id. Accordingly, "[a] judge

will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction.'" Id. (quoting Bradley v. Fisher, 80 U.S. (13 Wall.) at 351.

We repeat that in the instant case, the arrest warrant was not issued for appellant, nor did appellant have any legal obligation to discharge his son's fine. Nonetheless, appellant was for the second time interjecting himself into the controversy; however, appellant insisted on doing so in his own manner. Appellant again wished to discharge his son's debt by issuing a check that could not be collected upon by the proper authorities. Accordingly, appellant

interjected himself into a dispute over which appellee Komaromy had proper subject-matter jurisdiction and thus judicial immunity operates to bar relief. The fact that appellee Komaromy may well have exceeded his authority will not divest him of the immunity granted his office by law.

The judgment of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing not for publication memorandum opinion.

/s/ Walter K. Stapleton
Circuit Judge